HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

WPMS No. 95 of 2005

Azahar Mohammad

Vs.

Prescribed Authority
(Civil Judge)

Approved for reporting.

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~~Not approved for reporting~~

Date of decision 14.07.2006

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 95 of 2005 (M/S),

1. Azahar Mohammad son of late Smt. Quyam Begam and Late Sri Majhar Mohammad, resident of 43/4, Gandhi Road, Idehradun.
2. Smt. Afoza Parveen.
3. Smt. Shehanaj Parveen.
4. Smt. Bilkuees Begam.
5. Smt. Shamim Akhtar.

Applicant Nos. 2 to 5 daughters of late KLSmt. Qu;yam kBegam, late landlord. All applicant no.2 to 5 through their brother and general Attorney Azhar Mohammad, present landlord and applicant no.1 as Above. ..... Petitioners.

Versus

1. Prescribed Authority(Civil Judge, Senior Division), Dehradun.
2. Sri Abdul Hamid, son of late Sri Mohammad Hanif, Resident of One Small Godown Room, Ist floor, Inamallah Building, 43/3, Gandhi Road, Ldehradun.

..... Respondents.

Sri B.P.Nautiyal and Sri Harimohan Bhatia, learned counsel for the applicants.
C.S.C. for respondent no.1 & Sri Vishwa Deepak Bisen, Ld.counsel for respondent no.2.

Dated: 14.07.2006

HON'BLE RAJESH TANDON, J.

Heard Sri B.P. Nautiyal, Advocate for the petitioner and Sri Jitendra and Sri Munish Bhardwanj, Advocate for the respondents.

By the present writ petition the petitioners have prayed for a writ of certiorari quashing the order dated 28.10.2004 passed by the Civil Judge (Senior Division), Dehradun.

Factual Merits of the Case:-

Briefly stated, a petition under section 21(1)(a) of U.P.Act No. 13 of 1972 was filed by one Smt. Qayum Begam,

the predecessor of the petitioners praying for the eviction of the respondent No.2 from the premises known as first floor 43/3 Gandhi Road, KLDehradun @ Rs.50/- per month. The Prescribed Authority vide order dated 29th July, 1995 passed the order of eviction. No appeal was preferred and the order dated 29th July, 1995 has become final. The petitioners have filed an application for execution being Misc. Case No.29 of 2004 on 9.9.2004 stating therein that the property having been released in their favour and, as such, the possession may be delivered under section 23 of U.P. Act No. 13 of 1972.

A perusal of the record shows that no objections were filed by the respondent No.2 in reply to the application under Section 23 of the U.P. Act No. 13 of 1972. On 28.10.2004, the Prescribed Authority/Civil Judge (Senior Division) passed the order that under Article 137 of the Limitation Act, the limitation has been prescribed to the extent of three years and, therefore, the execution being time barred the application under section 23 is not maintainable. Aggrieved by the said order the petitioners have approached under Article 226/227 of the Constitution of India. A short counter affidavit has been filed on behalf of the respondent No.2 where the respondent No.2 has referred paragraph No.3 in which it has been stated that the execution application is not maintainable in order to execute the release order and is barred by the provisions of

Section 21 (1)(a) of U.P.Act No.13 of 1972. Further in paragraph No.5 it has been stated that the claim of the petitioners for the release of the accommodation is not maintainable in as much as it was for the personal requirement of Smt. Qayum Begam and after her death the personal requirement of the petitioners are not maintainable and, as such, there being no personal need the application under section 23 is not maintainable. Further in paragraph No.7 of the counter affidavit it has been stated that the order under section 21 (1) (a) of the Act being not a decree, no execution application is maintainable under Article 136 of the Limitation Act. From the perusal of the record it is evident that the application under section 23 of the Act was filed by the petitioners, the same was not controverted by the respondent No.2. Neither any objections in the form of reply nor any other objections in the form of the executability of the order under section 21 (1)(a) of the Act was filed before the Prescribed authority. However, the petitioners have filed the present writ petition challenging the order passed by the Prescribed Authority dated 28.10.2004 on the following points:

(1) Whether the Prescribed Authority has wrongly applied Article 137 of the Limitation Act whereas the provisions of Article 136 of the Limitation Act is applicable in the present case.

(2) Whether the execution of the order under Section 21 (1) (a) of the Act No. 13 of 1972, no limitation has been prescribed.

(3) Whether the order under section 21 of the Act having reached the finality, the Prescribed Authority has any jurisdiction under section 23 of the U.P.Act No.13 of 1972 to go behind the order passed under section 21(1)(a) of U.P.Act No.13 of 1972.

(4) Whether the personal need of the londlord is available to the heirs and further applicability of Section 21 (7) of the Act to the facts of the present case.

POINT NOs.1 & 2

Applicability of the Provisions of the Limitation Act for the execution of the order

Learned counsel for the petitioners has submitted that Article 136 of the Limitation Act applies for the execution of decree within a period of 12 years. The same is quoted below:

"136. When the decree or order becomes enforceable or where the decree or any subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods, when default in

making the payment or delivery in respect of which execution is sought, takes place:

Provided than application for the enforcement or execution of a decree granting a perpetual injunction shall not be subject to any period of limitation".

However, Articles 136 and 137 is quoted below:-

136. For the execution of any decree (other than a decree granting a mandatory injunction) or order of any civil court.	Twelve years	[When] the decree or order becomes enforceable or where the decree or any subsequent order directs any payment of money or the delivery of any properly to be made at a certain date or at recurring periods, when default in making the payment or delivery in respect of which execution is sought, takes place: Provided that an application for the enforcement or execution of a decree granting a perpetual injunction shall not be subject to any period of limitation.

PART II-OTHER APPLICATIONS

137. Any other application for which no period of limitation is provided elsewhere is this division.	Three years	When the right to apply accrues.

Counsel for respondent No.2 has submitted that it is not a decree of the court and, as such, the provisions of Article 136 will not apply in the present case.

The word ‘decree’ has been defined under the Civil Procedure Code. Section 2(2) of the Civil Procedure Code provides as under:

“ 2(2). ‘decree’ means the formal expression of an adjudication which, so far as regards the court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within…. Section 144 but shall not include-

(a) any adjudication from which an appeal lies as an appeal from an order, or

(b) any order of dismissal for default.”

As will appear from the provisions of Section 21 (6) that on the expiration of the period of 30 days from the order under sub section (1) or sub section (1-A) or sub section (2), the tenancy of the tenant shall stand determined in its entirety. Sub Section (6) of Section 21 is quoted below:

“21(6). On the expiration of a period of thirty days from an order under sub section (1) or sub section (1-A) or sub section (2), the tenancy of the tenant shall stand determined in its entirety or, as the case may be, in respect of any part of appurtenant land released in favour of the landlord, and in

the latter case, the rent payable for the remainder of the building under tenancy shall be such as may be agreed upon between the parties and in the absence of such agreement as may be determined under section 8".

Thus, so far as the order in question under section 21 of U.P.Act No.13 of 1972 is concerned, the same having attained the finality and rights have already been adjudicated it will amount to decree as defined under section 2(2) of the Code of Civil Procedure and, as such, Article 136 of the Limitation Act shall apply to the case of the petitioners.

The counsel for the petitioners has referred the judgment reported in ***Kashi Ram Vs Rakesh Arora – AIR 1987 Supreme Court 2230*** where the similar question has been decided. Paragraph No.17 and 18 of the above judgment are quoted below:

"17. This decision negates the two principal contentions urged in this case on behalf of the appellant, namely there was no question of res judicata in granting subsequent permission under the Slum Act if changed circumstances so warranted and secondly limitation would start after the permission was granted. But the Delhi High Court had no occation to consider the effect of the decision of this Court in Ravi Dutt V. Ratan Lal, (1984) 2 SCR 614: (AIR 1984 SC 967) where it was held that the relevant provisions of the Delhi

Rent Act for eviction on the ground of bona fide reaquirement being in Chapter III-A of the said Act had over riding effect and the Slum Act was rendered inapplicable. If that is the position then no permission under Slum Act was, at all, necessary in case of a decree for bona fide requirement. The said principle was reiterated in two previous decisions. It that was so then the decree for eviction having been passed on 15th October, 1960 and the application for execution being filed on or about 25th September, 1979 was clearly barred by limitation".

"18. But the basic question in the instant case as we have noted from the facts of the case is that the decree for eviction under the Rent Act was passed in October, 1960 and the appeal against the same was dismissed in October, 1961 by the Tribunal. Thereafter, an application was made in May, 1962 for permission under S.19 of the Slum Act as it then stood was dismissed in March, 1963. Thereafter no action was taken up to 1978. When in 1978 action was initiated by filing the second application under the Slum Act, 12 years from the dismissal of the application under the Slum Act had passed and the decree had become barred. The decree had clearly become barred by limitation. Article 136 of the Limitation Act, 1963 provides that a decree can be executed within 12 years from the date on which it became executable.

Decree passed by the Rent Controller even if it was not executable and enforceable unless permission under the Slum Act had been taken, which as noticed before was not the position in law the steps for such permission had become barred. Steps for filing the application under the Slum Act were not taken, on refusal of the first application within 12 years thereof. It is apparent therefrom that the execution of the decree for eviction which was passed on 15th of October, 1960 became time barred on 14th of October, 1963 under Article 182 of the Indian Limitation Act, 1908 as it stood at that time. Under Section 31(a) of the 1963 Limitation Act would not be availed of in respect of an application for which the period of limitation had expired before the commencement of the 1963 Limitation Act, that is to say, 1.1.1964. But even if Article 136 of the Limitation Act, 1963 was attracted it had become barred after 12 years from the date of the decree i.e. 15th October, 1960".

On the other hand, the counsel for the respondent No.2 has referred paragraph No.12 of the aforesaid judgment which is quoted below:

"12. So far as the first question about the applicability of the Limitation Act, it is necessary to refer to S.42 of the Delhi Rent Control Act, 1958 (hereinafter called 'the Act' which provided that an order of eviction has to be executed

like a decree of the Civil Court. The provisions of the Code of Civil Procedure executing the decree are made applicable by legal fiction recognized by virtue of S.42 of the Act. In any case procedure of the Small Causes is adopted by the Controllers under the provisions of the Act wherein also in execution the provisions of Code of Civil Procedure are applicable and as such law of limitation would be attracted. The question is when the limitation starts running. Once the limitation started running then unless the statute comes to the rescue of a person the period would expire after the efflux of time".

The counsel for the respondent No.2 has distinguished the aforesaid judgment on the ground that under the Delhi Rent Control Act the order of eviction is like a decree and, as such, the observations of the Apex Court will not be applicable under the provisions of U.P.Act No.13 of 1972. A perusal of Section 37 of U.P.Act No.13 of 1972. Section 37 of U.P.Act No.13 of 1972 reads as under:

"37(1). No order made in exercise of any power conferred by or under this Act shall be called in question in any court.

(2) Whether an order purports to have been made and signed by any authority in exercise of any power conferred by or under this Act, a court shall, unless the contrary is

proved, presume that such order was so made by that authority."

The Apex Court in ***Uttam Namdeo Mahale Vs Vithal Deo and others 1977 SC FB Rent Cases Page 349***, has held that the decree for eviction can be executed at any point of time. The observations are quoted below:-

"*It is seen that the order of ejectment against the applicant has become final. Section 21 of the Mamalatdar's Court does not prescribe any limitation within which the order needs to be executed. In the absence of any specific limitation provided thereunder, necessary implication jis that the gerneral law of limitation provided in Limiation Act (Act 2 of 1963) stands excluded. The Division Bench, therefore, has rightly held that no limitation has been prescribed and it can be executed at any time, especially when the law of limitation for the purpose of this appeal is not there. Where there is statutory rule operating in the filed, the implied power of exercise of the right within reasonable limitation does not arise. The cited decisions deal with that area and bear no relevance to the facts.*"

In view of the aforesaid, I find substance in the submission of the petitioner that the eviction order can be executed within a period of general law of limitation i.e. within a period of 12 years from the date when the decree or order

become enforceable. Thus Article 136 of the Limitation Act covers both the ‘decree’ or ‘order’. Even if the eviction of the tenant is treated to be an order, the same is covered under Article 136 of the Limitation Act.

Point No. 3 SCOPE OF SECTION 23 (1) OF THE ACT

Section 21(1)(a) of U.P. Act No.13 of 1972 provides the eviction of the tenant. Section 22 of the Act provides an appeal against the order passed under Section21 of the Act.

Section 23 of U.P.Act No.13 of 1972 refers to the enforcement of eviction order. It reads as under:

“23(1). The prescribed authority may use or cause to be used such force as may be necessary for evicting any tenant against whom an order is made under Section 21 or an appeal under section 22, as the case may be, or against any other person found in actual occupation, and for putting the landlord into possession.

(2). Every order of the prescribed authority in proceeding under this section shall be final”.

As will appear from Section 23 of U.P. Act No.13 of 1972 that the Prescribed authority may use or cause to be used as the case may be for evicting the tenant against whom an order was made under section 21 of the Act. As will appear from the record of the case that when application under Section 23 was presented for getting the eviction order enforced, the

respondent No.2 raised no voice, the prescribed authority, therefore, was only to use or cause to be used such force as may be necessary in order to execute the order under section 21(1)(a) of U.P.Act No.13 of 1972.

Relying upon the judgment of the Apex Court reported in ***Syed Asadullah Kazmi v. Addl. District Judge, Allahabad and others 1981 A.R.C. Page 543*** it has been held in cases that the order or release acquires finality the Prescribed Authority is bound to give effect to it and in doing so he does not act outside the jurisdiction or contrary to law. The observations are quoted below:-

"3. This provision confers a supervisory and not a appellate power. The record can be called for seeing that the decree is according to law. If it is not, the revisional court can pass such order with respect thereto as it may think fit. This power is conditional on the revisional court finding that the decree or order sought to be revised was not according to law. The phrase 'pass such orders with respect thereto as it thinks fit' has come up for consideration before the Supreme Court in several decisions. In Arbind Kumar Singh v. Nand Kishore Prasad AIR 1968 SC 1227, it was held that the clause was wide enough to give power to the revisional court to admit additional evidence. In Manganlal Chhotabhai Desai v. Chandrakant Motilal AIR 1979 SC 37 it was held that the

expression authorized the revisional court to issue directions to the parties to the case. In the State of Kerala v. K.M. Charia Abdulla AIR 1965 SC 1585, it was observed that the revisional court has power to pass such orders for rectifying the defect as the revisional court considers, in the circumstances of the case, just and proper.

4. On the other hand, the phrase 'according to law' occurring in Sec. 25 'aforesaid, was considered by the Supreme Court in Hari Shanker v. Rao Girdhari Lal Choudhary AIR 1963 SC 696, it was held that the phrase 'according to law' refers to the decision as a whole and is not to be equated to error of law or of fact simpliciter/ The over all decision must be according to law, i.e. there should be no miscarriage of justice due to a mistake of law. The Court approved the observation of ***Beaument, C.J., in Belland Co. Ltd. v. Waman Ramraj AIR 1938 Bombay 223,*** *where the learned Chief Justice had given some instances in which the court could interfere under Section 25. They were, were the court had no jurisdiction in the matter, where a party had not been given a proper opportunity of being heard, or that the burden of proof had been misplaced on wrong shoulders or where the court had based its decision on evidence which should not have been admitted. The court can*

interfere where it comes to the conclusion that there has not been a proper trial according to law. It was observed:-

"But, in my opinion, that the court ought not to interfere purely because it thinks that possibly the judge who heard the case may have arrived at a conclusion which the High Court would not have arrived at."

5. Considering the phrase 'according to law' occurring the first proviso to Section 75 (1) of the Provincial Insolvency Act, the Supreme court in Malini Ayyappa Naicker v. Seth Manghraj Udhavdas firm AIR 1969 SC 1344, observed that while exercising that power, the High Court is by and lard bound by the findings of fact reached by the district court. If the legislature intended to confer power on it to re-examine both questions of law and fact, it would have conveyed its intention by appropriate words as has bene done under various other statutes. A wrong decision on facts by a competent court is also a decision according to law. The court has no power to be novo examine the findings of fact reached by the trial court. To the same effect are several decisions of this court. In Ram Narain v. Kandaiya Lal Vishwakarma 1965 ALJ 989 (D.B.), a Division Bench held that under Section 25, the revisional court is not empowered to look into the evidence of the case and to decide whether a finding of fact arrived at by the court below is justified by the evidence on

record or not. Several Single Judge decisions, 1977 AWC 545 and 1978 AWC (J) 78 are also of the same opinion."

In ***Kunwar Gulab Singh v. Zila Purti Adhikari and two others 1981(1) ARC Page 43,*** the Apex Court has observed as under:-

"4. Annexure no. 15, which is a copy of an order of the District Judge, dated 6-12-1977, mentions that Gaya Prasad Mehrotra was son of Achal Behari Mehrotra and that it was not seriously disputed that he was co-owner of the building of which the disputed premises was a part. It was also mentioned that the contention of Ganga Prasad Mehrotra had been separated and the disputed portion lay in the portion that had fallen to the share of Gaya Prasad Mehrotra. It is also evident from the above narration of facts that while originally the vacancy was notified and the allotment order was passed treating Achal Behari Morotra as landlord, the redelivery or possession was given in favour of the son of Gaya Prasad Mehrotra, namely, Ajit Kumar Mehrotra because of the circumstance that Gaya Prasad Mehrotra was at that time in jail."

The Prescribed Authority, therefore, while exercising the power under Section 23 of the Act has held to be an executing court of the orders passed in proceedings under section 21(1)(a) of U.P. Act No.13 of 1972 and, therefore, he has no

right to adjudicate over the dispute between the landlord and tenant who has already obtained an order in his favour.

The Division Bench of the Allahabad High Court reported in ***Smt. Raj Kumari Kapoor Vs. The Prescribed Authority (IInd Civil Judge,) Kanpur and others 1984 (2) ARC Page 52*** has observed as under:-

"Since no order has been passed by the Supreme Court for stay of the execution of the decree which has become final between the parties, it was open to the Prescribed Authority to have executed that decree. It is well settled principle that where there are several decree against a party and stay order is passed only in one of them, the remaining decrees can be executed under the law. The Prescribed Authority failed to exercise its jurisdiction in accordance with law."

The Apex Court has defined the jurisdiction under section 23 of U.P.Act No.13 of 1972 and has held that the order passed by the Prescribed Authority having attained the finality, the Prescribed Authority is not permitted to reopen the proceedings.

POINT NO.4:

APPLICABILITY OF THE PROVISIONS OF SECTION 21 ((7) OF THE ACT.

It may be pointed out that so far as the executability of the decree is concerned, the respondent No.2 has not raised

any objections before the Prescribed Authority. However, in the counter affidavit only a plea has been taken with regard to non-exeutability of the decree having barred by the provisions of Section 21(7) of the Act No. 13 of 1972.

Counsel for the petitioners has submitted that provisions of Section 21(7) of the Act will not apply in the present case. It reads as under:

"21(7). Where during the pendency of an application under clause (a) of sub section (1), the landlord dies, his legal representatives shall be entitled to prosecute such application further on the basis of their own need in substitution of the need of the deceased".

As already pointed out that since the respondent No.2 has not raised any objections during the proceedings of the case and further sub clause (7) of Section 21 of the Act is available only during the proceedings of the case. The order under section 21 (1)(a) of the Act has already attained the finality in the year 1995 no steps have been taken by respondent No.2 at any point of time to challenge the final order on that ground.

Counsel for the petitioners has also referred the judgment of 2003 Uttaranchal Decisions page 271 ***Smt. Sabira Banu and others Vs Mohan Singh & another*** where the order has been passed after relying upon the

judgment of the Apex Court in ***Kamleshwar Prasad Vs. Pradumanju Agarwal (dead) by L.Rs.' and others 1997 Vol I A.R.C. page 627***. The relevant paragraphs are quoted below:

"10. Sri B.C. Pandey has referred the decision in Birendra Nath Vs. 6th A.D.J. Moradabad and other, 1981 ARC 191 where Hon'ble Mr. Justice S.D. Agrawal has relied upon the judgment of Hon'ble Supreme Court in Phool Rani Vs. Naubat Rai AIR 1973 S.C. 2110 and has held that if the application for release is made on personal requirement of landlord and if such a landlord dies, the personal cause of action itself perished with him. In the aforesaid judgment there is no reference of the provision of sub section (7) of section 21 and as such aforesaid view cannot be relied upon. The learned counsel for the petitioner has further relied upon M/s N Nandi Prasad Vs. Ramesh Chandra Gupta and others 1997 A.R.C. II 654 where Hon'ble Mr. Justice Sudhir Narain has distinguished the aforesaid judgment of Birendra Nath's case (Supra). Similar controversy arose in Raghunath G. Panhale Vs. Chaganlal Sunderji and Co. (1999) 8 SCC page 1. The case relates to the bonafide requirement of landlord. The reference was also made by the Hon'ble Supreme Court regarding Phool Rani's case supra and the apex court has come to the conclusion that the judgment in Phool Rani's

case has been over-ruled in Shatilal Thakor Dass and others Vs. Chimanlal Maganlal Tewala (1976) 4 SCC 417. The observations of the Apex Court in Raghunath G. Panhale's case are as under:-

" Learned counsel for the respondent, however, raised another point regarding abatement and relied upon Phool Rani Vs. Naubat Rai Ahluwalia's to contend that while the matter was in the trial court, the original plaintiff died, that the cause of action based on his bonafide requirement ceased to exist and the suit could not have been continued by his heirs. This was because the original plaintiff's requirement would not be the same as that of his heirs. It is true, the above judgment does support the above contention. On the main point, the above decision was overruled in Shantilal Thakordas Vs. Chimanlal Manganlal Telwala where it was held that if the original plaintiff pleaded that it was his own need and that of the family members, the cause of action would survive on his death to his heirs. In Shantilal case it was pointed out that if the landlord claimed possession on the ground of bona fide requirement for himself and his family members, his family members could continue the same eviction case, after the landlord's death, without amendment since the case of action would survive to them."

"11. As will appear from the observations of Hon'ble Supreme Court that the landlord in his initial application has already state in paragraph 4 that he needs the premises in question for his family members. Similar controversy arose in Kamleshwar Prasad Vs. Pradumanju 1997 Vol I ARC 627 where apex court has observed that even the landlord died during the pendency of the petition bona fide need cannot be said to have been lapsed. Need, therefore, was set up with regard to the family members. According to the landlord Mohan Singh having been adopted and he having been shown as family member, need having been shown regarding grand son, therefore, in my opinion there is no impediment for the landlord to prosecute the original application under section 21 (1)(a) of U.P.Act No.13 of 1972 by the legal representative of Sri Narain Singh after filing application under Rule 25 of U.P. Act XIII of 1972 I am, therefore, of the opinion that the application under Rule 25 has been rightly allowed."

The question arose as to whether the decree obtained on the ground of bona fide requirement of the landlord would abate or not if the eviction was sought on the basis of the requirement of himself. The Apex Court has held in the case of ***Phool Rani Vs. Nauban Rao Alwalia (1973) 1 SCC 688*** that the original plaintiff died and the cause of action based on his bona fide requirement ceased to exist and the suit could

not have been continued by his heirs but the decision has been over ruled in the case of ***Shanti Lal Thakordas and others Vs. Chimanlal Magan Lal Telwala (1976) 4 SCC 417.*** In the case of Shanti Lal, the Apex Court has held as under:

"5. But even so the appellants cannot succeed in this appeal. Firstly it is doubtful whether the requirement of thue premises by the landlord for occupation by the partnership firm in which he is a partner will be tantamount to "occupation by himself" i.e. by the landlord. Certain decisions of some High Court were brought to our notice taking 6the view that it is so. We refrain from expressing our opinion in that regard. We assume, as seems to have been the view of the High Court in this case, that the requirement of the premises for the use of a partnership firm by the landlord in which he is a partner is covered by Section 13 (1) (g) of the Bombay Act. Yet on the facts of this case there is an insurmountable difficulty in the way of the appellants. From the judgment dated March 31, 1970 of the first appellate Court it would appear that on the death of Thakordas in June, 1965 a new partnership was constituted. One of his sons Shantilal who was a partner from before was taken as a partner in the new artnership along with Thakordas's another son Dhanvantlal Thakordas, appellant 2. there were some outsider partners.

Harish Thakordas, appellant 3, a minor son of Thakordas had not been admitted to the benefits of the partnership. He had, therefore, no interest in the partnership firm Jai Hind Silk Weaving Works. The appellate Court took the view that the substituted plaintiffs wanted to use the suit premises for the purpose of a godown for keeping the yarn clothes and machinery articles and also for a retail shop and showroom of the partnership. This is no sense could be the requirement of appellant Harish even assuming that it could be said to be the requirement of his tow elder brothers, appellants 1 and 2. In that view of the matter we have got to dismiss the appeal although Mr. Dholakia, learned Counsel for the appellants succeeded in persuading us to differ from the ratio of Phul Rani's case.

6. Counsel for the appellants endeavoured to bring their case within one of the exceptions noted in Phul Rani's case. He submitted that a decree had already been passed in favour of the original plaintiff by the trial Court and that could not be disturbed on his death either in appeal or revision. We do not accept the contention as sound or correct. In Phul Rani's case no final opinion was expressed on this question. More over, we find that on the earlier occasion the High Court had set aside the decree and remanded the suit to the first appellate Court for a fresh decision."

The Apex Court in ***Shakuntala Bai and others Vs. Narayuan Das and others AIR 2004 S.C. 3484*** has held as under:-

"11. In Shantilal Thakordas v. Chimanlal Maganlal Telwala 1976 (4) SCC 417, a larger Bench overruled the decision rendered in Phool rani v. Naubat Rai Ahluwalia (supra) in so far it held that the requirement of the occupation of the members of the family of the original landlord was his personal requirement and ceased to be the requirement of the members of his family on his death. The court took the view that after the death of the original landlord the senior member of his family takes his place and is well competent to continue the suit for eviction for his occupation and occupation of the other members of the family. Thus, this decision held that the substituted heirs of the deceased-landlord were entitled to maintain the suit for eviction of the tenant. The ratio of this decision by larger Bench does not in any manner affect the view expressed in Phool Rani (supra) that where the death of the landlord occurs after a decree for possession has been passed in his favour, his legal representatives are entitled to defend further proceedings like an appeal and the benefit accrued to them under the decree. In fact, the ratio of Shantilal Thakordas (supra) would reinforce the aforesaid view. There are several decisions of

this Court on the same line. In dumanju Aggarwal, 1997 (4) SCC 413. It was held that the need of the landlord for premises in question must exist on the date of application for eviction, which is the crucial date and it is one the said date the tenant incurred the liability of being evicted therefrom. Even if the landlord died during the pendency of the writ petition in the High Court, the bona fide need cannot be said to have lapsed as the business in question can be carried on by his widow or any other son. In Gaya Prasad v. Pradeep Srivastava, 2001 (2) SCC 604, it was held that the crucial date for deciding as to the bona fides of requirement of landlord is the date of his application for eviction. Here the landlord had instituted eviction proceedings for the bona fide requirement of his son who wanted to start a clinic. The litigation continued for a long period and during this period the son joined Provincial Medical Service and was posted at different places. The subsequent even i.e. the joining of the service by the son was not taken into consideration on the ground that the crucial date was the date of filing of the eviction petition. Similar view has been taken in G.C. Kapoor v. Nand Kumar Bhasin, 2002 (1) SCC 610. Therefore, thue legal position is well settled that the bona fide need of the landlord has to be examined as on the date of institution of proceedings and if a decree for eviction is passed, the death of

the landlord during the pendency of the appeal preferred by the tenant are fully entitled to defend the estate.

13. The limited question for consideration in this case was whether a decree which had attained finality would becme unexecutable on account of death of the landlord and this question was answered in favour of the landlord and against the tenant basically on the principle that the executing Court cannot go behind the decree. For the decision of the appeal it was wholly unnecessary to examine the question as to the effect of death of the landlord during the pendency of the appeal preferred by the tenant after a decree for eviction has been passed. The decisions rendered in Phool Rani (supra) and Shantilal Thakordas (supra) were not brought to the notice of the Bench. We are, therefore, of the opinion that the observations made in the aforesaid case that "event which take place subsequent to the filing of an eviction petition under any Rent Act can be taken into consideration for the purpose of adjudication until a decree is made by the final Court determining the rights of the parties", which are more in the nature of obiter do not represent the correct legal position."

It is well known that rights of the parties and the cause of action accrued to the landlord crystallizes at the time of the filing of the application and the subsequent events can not

hamper the original application under section 21(1)(a) of U.P.Act No.13 of 1972.

In ***Gaya Prasad v. Pradeep Srivastava AIR 2001 SC 803,*** it has been observed as under:-

"10. We have no doubt that the crucial date for deciding as to the bona fides of the requirement of the landlord is the date of his application for eviction. The antecedent days may perhaps have utility for him to reach the said crucial date of consideration. If every subsequent development during the post petition period is to be taken into account for judging the bona fides of the requirement pleaded by the landlord there would perhaps be no end so long as the fortunate situation in our litigative slow process system subsists. During 23 years after the landlord moved for eviction on the ground that his son needed the building, neither the landlord nor his son is expected to remain idle without doing any work, lest, joining any new assignment or starting any new work would be at the peril of forfeiting his requirement to occupy the building. It is a stark reality that the longer is the life of the litigation the more would be the number of developments sprouting up during the long interregnum. If a young entrepreneur decides to launch a new enterprise and on that ground he or his father seeks eviction of a tenant from the building, the proposed

enterprise would not get faded out by subsequent developments during the traditional lengthy longevity of the litigation. His need may get dusted, patina might stick on its surface, nonetheless the need would remain intact. All that is needed is to erase the patina and see the gloss. It is pernicious, and we may say, unjust to shut the door before an applicant just on the eve of his reaching the finale, after passing through all the previous levels of the litigation, merely on the ground that certain developments occurred pendente lite, because the opposite party succeeded in prolonging the matter for such unduly long period.

12. This Court reiterated the same principle in Kamleshwar Prasad v. Pradumanju Agarwal, (1997) 4 SCC 413: (1997 AIR SCW 2310 : AIR 1997 SC 2399 : 1997 ALL LJ 1369) that the crucial date normally is the date of filing the petition. In that case, a two-Judge Bench (K. Ramaswamy and G.B. Pattananik, JJ) has held that even the subsequent even of death of the landlor who wanted to start a business in the tenanted premises is not sufficient to dislodge the bona fide need established by him earlier. This is what Pattanaik J. has observed for the Bench (Para 3):-

"that apart, the fact that the landlord needed the premises in question for starting a business which fact has been found by the appellate authority, in the eye of law, it

must be that on the day of application for eviction which is the crucial date, the tenant incurred the liability of being evicted from the premises. Even if the landlord died during the pendency of the writ petition in the High Court the bona fide need cannot be said to have lapsed as the business in question can be carried on by his widow or any other son.

13. In our opinion, the subsequent events to overshadow the genuineness of the need must be of such nature and of such a dimension that the need propounded by the petitioning party should have been completely elipsed by such subsequent events. A three-Judge Bench of this Court in Pusupuleti Venkateswarlu v. Motor and Generla Traders, (1975) 1 SCC 770 : (AIR 1975 SC 1409) which pointed to the need for re-moulding the relief n the strength of subsequent events affecting the cause of action in the filed of rent control litiation, forewarned that cognizance of such subsequent events should be taken very cautiously. This is what learned Judges of the Bench said then (Para 4):

"We affirm the proposition that for making the right or remedy claimed by the party just and meaningful as also legally and factually in accord with the current realities, the Court can, and in many cases must, take cautious cognizance of events and developments subsequent to the Institution of

the proceedings provided the rules of fairness to both sides are scrupulously obeyed."

17. Considering all the aforesaid decisions, we are of the definite view that the subsequent events pleaded and highlighted by the appellant are too insufficient to over-shadow the bona fide need concurrently found by the fact finding Courts.

18. We wish to add, as an epilogue, that this case can provide a catalytic agent for the High Courts to evolve some concrete scheme for winching to the fore similar long pending matters, lying in torpidity at the bottom of the crammed list of pending case in the High Courts after passing the initial orders, keeping the operative part of decrees in abeyance. It is worth considering whether a cell can be set up in each of such High Courts where the piles of backlog are a stirring problem, to pick out such cases to be brought to the notice of the Chief Justice of the High Court concerned so that he could take appropriate steps in the matter."

Counsel for the respondent No.2 has referred the judgment of ***Kedar Nath Agarwal & another Vs. Dhanraji Devi and another 2004 Vol 8 S.C.C. page 76.*** The same is quoted below:

"One of such grounds is bona fide requirement by the landlord for residential purposes or for purposes fo any profession, trade or calling. Sub-section (1) has to be read with sub-section (7) of Section 21. The relevant part of Section 21 reads as under:

"21. Proceedings for release of building under occupation of tenant.-

(1) The prescribed authority may, on an application of the landlord is that behalf, order the eviction of a tenant from the building under tenancy or any specified part thereof if it is satisfied that any of the following grounds exists, namely--

(a) that the building is bona fide required either in its existing form or after demolition and new construction by the landlord for occupation by himself or any member of his family, or any person for whose benefit it is held by him, either for residential purposes or for purposes of any profession, trade or calling, or where the landlord is the trustee of a public charitable trust, for the objects of the trust;

(7) Where during the pendency of an application under clause (a) of sub-section (1), the landlord dies, his legal representatives shall be entitled to prosecute such application further on the basis of their own need in substitution of the need of the deceased."

33. Conjoint regarding of clause (a) of sub-section (1) and sub-section (7) of Section 21 makes it clear that wheret eh possession is sought by the landlord on the ground of bona fide requirement and during the pendency of the application, the landlord dies, his legal representatives can prosecute such application on the basis of their own need in substitution of the need of the deceased.

34. In the light of decision referred to by us, particularly in Hasmat Rai and the provisions of sub-section (7) of Section 21 of the Act, the High Court has to consider the matter and record a finding."

As will appear from the judgment of the Apex Court that the legal representatives can prosecute their application for execution.

In view of the above, respondent No.2 has no right to retain the accommodation.

A writ of certiorari is issued quashing the order-dated 28.10.2004 passed by the Civil Judge (Senior Division), Dehradun. The respondent no.2 is allowed time up to 30th September, 2006 to vacate the premises provided:-

A) undertaking is given by the respondent no. 2 before the appropriate authority by 30th July, 2006 to vacate the accommodation by 30th September, 2006

(b) the respondent no. 2 shall pay the damages for use and occupation by 30th of July, 2006 along with the undertaking to pay the damages for July, August and September, 2006.

(c) failing which liberty is given to the petitioners to execute the decree forthwith.

A writ of certiorari is issued quashing the order-dated 28.10.2004 passed by the Civil Judge, Sr. Division, Dehradun.

Consequently, writ petition is allowed. No order as to costs.

(Rajesh Tandon, J)

Dated:14.07.2006
Rathour